

Donna M. Mezias (State Bar No. 111902)
dmezias@jonesday.com
Amanda M. Ose (State Bar No. 251757)
aose@jonesday.com
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700

E-FILED 06-09-2010

Attorneys for Defendant
HITACHI GLOBAL STORAGE TECHNOLOGIES,
INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

DEMETRIUS SCOTT,

Plaintiff,

v.

**HITACHI GLOBAL STORAGE
TECHNOLOGIES, INC. et al.,**

Defendants.

Case No. CV 10-00376 JF

**STIPULATED PROTECTIVE
ORDER**

(MODIFIED BY THE COURT)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than the prosecution and resolution of this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 8, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the

standards that will be applied when a party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ. P. 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staffs).

2.4 Designating Party: a Party or Non-Party that designates information or items as "Confidential" pursuant to this Stipulated Protective Order.

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery or provided in connection with the resolution, including the administration of any settlement, of this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.7 House Counsel: attorneys who are employees of a Party to this action.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

1 2.10 Party: any party to this action, including all of the officers, directors, employees,
2 consultants, retained experts, and Outside Counsel of Record (and their support staff).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
4 Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support services
6 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
7 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
9 “CONFIDENTIAL.”

10 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected Material
14 (as defined above), but also (1) any information copied or extracted from Protected Material;
15 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
17 However, the protections conferred by this Stipulation and Order do not cover the following
18 information: (a) any information that is in the public domain at the time of disclosure to a
19 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
20 a result of publication not involving a violation of this Order, including becoming part of the
21 public record through trial or otherwise; (b) any information known to the Receiving Party prior
22 to the disclosure or obtained by the Receiving Party after the disclosure from a source who
23 obtained the information lawfully and under no obligation of confidentiality to the Designating
24 Party. Any use of the Protected Material at trial shall be governed by a separate agreement or
25 order.

26 4. DURATION

27 Even after the final disposition of this litigation, the confidentiality obligations imposed
28 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a

1 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of
 2 all claims and defenses in this action, with or without prejudice; and (2) final judgment herein
 3 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 4 action, including the time limits for filing any motions or applications for extension of time
 5 pursuant to applicable law. **For a period of six months after the final disposition of this action,**
this court will retain jurisdiction to enforce the terms of this order.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party
 8 or Non-Party that designates information or items for protection under this Order must take care
 9 to limit any such designation to specific material that qualifies under the appropriate standards. A
 10 Designating Party must take care to designate for protection only those parts of material,
 11 documents, items, or oral or written communications that qualify, so that other portions of the
 12 material, documents, items, or communications for which protection is not warranted are not
 13 swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 15 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 16 unnecessarily encumber or retard the case development process, or to impose unnecessary
 17 expenses and burdens on other parties), expose the Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it designated
 19 for protection do not qualify for protection at all, or do not qualify for the level of protection
 20 initially asserted, that Designating Party must promptly notify all other parties that it is
 21 withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order
 23 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 24 material that qualifies for protection under this Order must be clearly so designated before the
 25 material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts of depositions
 28 or other pretrial or trial proceedings), that the Producing Party affix the legend

1 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or
 2 portions of the material on a page qualifies for protection, the Producing Party also must clearly
 3 identify the protected portions(s) (e.g. by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available for
 5 inspection need not designate them for protection until after the inspecting Party has indicated
 6 which material it would like copied and produced. During the inspection and before the
 7 designation, all of the material made available for inspection shall be treated as
 8 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
 9 produced, the Producing Party must determine which documents, or portions thereof, qualify for
 10 protection under this Order, then, before producing the specified documents, the Producing Party
 11 must affix the appropriate legend (“CONFIDENTIAL”) at the top of each page that contains
 12 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
 13 the Producing Party also must clearly identify the protected portions(s) (e.g. by making
 14 appropriate markings in the margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 16 that the Party or Non-Party offering or sponsoring the testimony identify any portions of the
 17 testimony that qualify as “CONFIDENTIAL” either on the record before the close of the
 18 deposition, hearing, or other proceeding, or within 20 days after receipt of the transcript.

19 Only those portions of the testimony that are appropriately designated for
 20 protection within the 20 days shall be covered by the provisions of this Stipulated Protective
 21 Order.

22 Transcript pages containing Protected Material must be separately bound by the
 23 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as
 24 instructed by the Party or Non-Party offering or sponsoring the witness or presenting the
 25 testimony.

26 (c) for information produced in some form other than documentary, and for
 27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 28 container or containers in which the information or item is stored the legend “CONFIDENTIAL”.

1 If only a portion or portions of the information or item warrant protection, the Producing Party, to
2 the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive
5 the Designating Party’s right to secure protection under this Order for such material. If material
6 is appropriately designated as “CONFIDENTIAL” after the material was initially produced, the
7 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
8 that the material is treated in accordance with the provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
12 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic
13 burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right
14 to challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
17 process by providing written notice of each designation it is challenging and describing the basis
18 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
19 notice must recite that the challenge to confidentiality is being made in accordance with this
20 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
21 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of notice. In
23 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
24 designation was not proper and must give the Designating Party an opportunity to review the
25 designated material, to reconsider the circumstances, and, if no change in designation is offered,
26 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
27 stage of the challenge process only if it has engaged in this meet and confer process first or
28

1 establishes that the Designating Party is unwilling to participate in the meet and confer process in
2 a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the Challenging Party shall file and serve a motion under Civil Local Rule 7 (and in
5 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of
6 challenge or within 14 days of the parties agreeing that the meet and confer process will not
7 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
8 competent declaration affirming that the movant has complied with the meet and confer
9 requirements imposed in the preceding paragraph. In addition, the Challenging Party may file a
10 motion challenging a confidentiality designation at any time if there is good cause for doing so,
11 including a challenge to the designation of a deposition transcript or any portions thereof. Any
12 motion brought pursuant to this provision must be accompanied by a competent declaration
13 affirming that the movant has complied with the meet and confer requirements imposed by the
14 preceeding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
16 Party. Until the Court rules on the challenge, all parties shall continue to afford the material in
17 question the level of protection to which it is entitled under the Producing Party's designation.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
20 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
21 defending, attempting to settle this litigation or administering any settlement of this litigation.
22 Such Protected Material may be disclosed only to the categories of persons and under the
23 conditions described in this Order. When the litigation has been terminated, a Receiving Party
24 must comply with the provisions of Section 13, below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and
26 in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the “Agreement to be Bound by Protective Order” (Exhibit A);

7 (b) the Receiving Party, including the officers, directors, employees (including
8 House Counsel), and insurers of the Receiving Party to whom disclosure is reasonably necessary
9 for this litigation and who have signed the “Agreement to be Bound by Protective Order” (Exhibit
10 A);

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
13 Bound by Protective Order” (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
17 Protective Order” (Exhibit A);

18 (f) during and/or in preparation for their depositions, witnesses in the action to
19 whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by
20 Protective Order” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
21 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
22 Material must be separately bound by the court reporter and may not be disclosed to anyone
23 except as permitted under this Stipulated Protective Order; and

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.
26
27
28

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material- and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.¹

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the Court.

12. FILING PROTECTED MATERIAL.

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

13. FINAL DISPOSITION.

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final ~~termination~~ **disposition** of this action, each Receiving Party must destroy or return to the Producing Party all Protected Material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,

1 the Receiving Party must submit a written certification to the Producing Party upon request (and,
2 if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies
3 (by category, where appropriate) all the Protected Material that was returned or destroyed and that
4 affirms that the Receiving Party has not, other than as authorized below in the subsequent
5 paragraph, retained any copies, abstracts, compilations, summaries or other forms of reproducing
6 or capturing any of the Protected Material.

7 Notwithstanding the provisions in the immediately preceding paragraph, Counsel are
8 entitled (i) to retain an archival copy of all documents and things produced in discovery,
9 pleadings, motion papers, transcripts, legal memoranda or correspondence, even if such materials
10 contain Protected Material, and (ii) to retain or destroy, as it chooses, any work product, even if it
11 contains Protected Material. Any such retained material that contains or constitutes Protected
12 Material remains subject to this Protective Order as set forth in Section 4 (DURATION), above.

13 14. MISCELLANEOUS

14 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the Court in the future.

16 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
19 no Party waives any right to object on any ground to use in evidence of any of the material
20 covered by this Protective Order.

21 ///

22 ///

23 ///

24 ///

25 //

26 ///

27 ///

28 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: June 8, 2010

JONES DAY

4 By: /S/ Donna M. Mezas

5 Donna M. Mezas
6 Attorneys for Defendant
7 HITACHI GLOBAL STORAGE
8 TECHNOLOGIES, INC.

9 Dated: June 8, 2010

HIGHMAN, HIGHMAN & BALL

10 By: /S/ Louis A. Highman

11 Louis A. Highman
12 Attorney for Plaintiff
13 DEMETRIUS SCOTT

14 SIGNATURE ATTESTATION

15 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
16 “conformed” signature (/S/) within this efiled document.

17 Dated: June 8, 2010

JONES DAY

18 By: /S/ Donna M. Mezas

19 Donna M. Mezas
20 Attorneys for Defendant
21 HITACHI GLOBAL STORAGE
22 TECHNOLOGIES, INC.

23 **AS MODIFIED BY THE COURT,**
24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25 DATED: June 9, 2010

26 
27 Hon. ~~Jeremy Fogel~~ Howard R. Lloyd
28 United States District Court Judge
Magistrate

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for
 the Northern District of California on [date] in the case of *Scott v. Hitachi GST.*, Case No. CV 10-
 00376 JF, I agree to comply with and to be bound by all the terms of this Stipulated Protective
 Order and I understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any person or
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]

SFI-641905v2